IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16141 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRANKUMAR PURSOTTAMDAS PATEL

Versus

REGIONAL PASSPORT AUTHORITY

Appearance:

MR DC DAVE for Petitioner No. 1

MS PJ DAVAWALA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 30/07/2004

ORAL JUDGEMENT

1.1 By way of this petition the petitioner has challenged the action of non-consideration of his passport application on the ground that he has not disclosed the fact that the criminal case was pending against him.

2.1 The case of the petitioner is that he is doing the business of finance and running a sole proprietorship concern in the name and style of "Kiran Finance". As part and parcel of his business activities, the petitioner, inter alia, lends money to those who are desirous of availing financial assistance for some purpose.

2.2 The petitioner applied for a new passport to the respondent in the prescribed manner. On 24.9.2003 the petitioner received a communication dated 24th September 2003 from the office of the respondent calling upon the petitioner to furnish copies of the judgement of the Court with an explanation for suppression. The petitioner thereupon made an enquiry with the office of the respondent and he was informed that some criminal case is pending against the petitioner and the said fact was not disclosed by the petitioner in the application. Thereupon the petitioner made inquiry and it was revealed that a First Information Report is registered against the petitioner vide C.R. No.60 of 2003 at Vallabh Vidyanagar Police Station for the alleged offences punishable under sections 324 and 504 of the Indian Penal Code. The petitioner also learnt that no chargesheet has been filed against the petitioner and no process has also been issued against the petitioner. The petitioner, therefore, addressed a communication dated 13.10.2003 to the respondent mentioning the aforesaid facts. However, the respondent has not taken any action for issuance of the passport. Hence the present petition.

3.1 Mr.Dave for the petitioner submitted that no chargesheet was filed or any process has been issued against the petitioner. Merely a criminal complaint is filed against the petitioner the respondent authority cannot take a stand that they will not consider his case for passport.

3.2 Mr. Dave has relied upon a judgement of this Court reported in 2003(1) GLH page 1 wherein it is held as under:

> "Considering the aforesaid notification issued by the Central Government, as well as considering the judgement of the Bombay High Court, in my view, this petition is required to be allowed by giving opportunity to the petitioner to approach the concerned Magistrate with an appropriate application for permitting him to go abroad for a particular time limit. If the concerned Magistrate permits the petitioner to go abroad

for a particular period on the basis of such order it will be open for the petitioner to request the Passport Authority to grant him passport for a limited period during which he is permitted to go abroad. The petitioner may accordingly approach the concerned Criminal Court, with a prayer to permit him to go abroad and if any such application is preferred, the concerned Criminal Court may decide such application in accordance with law. If the concerned Criminal Court, before whom the criminal cases are pending, permit the petitioner to go abroad, the Passport Authority may pass appropriate order in the matter of issuing passport to the petitioner in terms of the order of the Criminal Court and subject to the conditions laid down by the Notification. As observed by the Bombay High Court, the Passport Authority in future cases of a similar nature, may inform the applicants against whom any criminal case is pending about the Notification of the Central Government and may inform such applicant that they may approach the concerned Criminal Court for permitting such applicant to go abroad and if any such order is passed by the Magistrate, permitting such applicant to go abroad, the Passport Authority may dispose of such applications in view of the Notification and in view of the provisions of the Passport Act. It is clarified that in case the Criminal Court permits the petitioner to go abroad, the Passport Authority shall act on the basis of such report for the purpose of issuing passport. The passport may not be refused solely on the round of pendency of the present criminal cases in case the Magistrate so permits. It is clarified that if there are other grounds available to the Passport Authority to refuse the passport, it is for the authority to consider the same in accordance with law. The passport may not be refused solely relying on the present criminal cases, which are pending against the petitioner, in case permission is granted by the Magistrate, as indicated above. It is also clarified that whether such application should be granted or not is within the jurisdiction of the competent Criminal Court and it is for the concerned Magistrate to decide such application, if at all the same is received from the present petitioner and it is for the Magistrate to decide the same in accordance with law and this Court has not

expressed any opinion on the aforesaid subject."

Thus, it is clear that the passport may not be refused solely relying on the present criminal case which is pending against the petitioner. On the date of application the petitioner was not chargesheeted, but only the FIR was lodged.

4.1 Under the aforesaid circumstances, the respondent authority shall consider the application of the petitioner and will decide the same in light of the aforesaid decision. However, the petitioner will be allowed to go abroad only after the permission of the concerned Criminal Court before which the criminal proceedings are pending. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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